

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2223 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
  2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

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HEIRS AND LEGAL REPRESENTATIVES OF ISHWARLAL REVANDAS PATEL

Versus

STATE OF GUJARAT & ANR.  
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Appearance:

Shri A.J. Patel, Advocate, for the Petitioners

Shri T.H. Sompura, Asst. Govt. Pleader, for the  
Respondents  
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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 24/04/96

ORAL JUDGEMENT

The order passed by the City Deputy Collector at Ahmedabad on 20th January 1984 as affirmed in revision by the order passed by the Collector of Ahmedabad (respondent No. 2 herein) on 17th March 1986 as affirmed in further revision by the order passed by and on behalf of the State Government (respondent No. 1 herein) on 4th

August 1988 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, the City Deputy Collector set aside the mutation entries made with respect to one parcel of land bearing survey No. 316 situated at Ghatlodia, Taluka City in Ahmedabad District (Rural) (the disputed land for convenience).

2. The facts giving rise to this petition move in a narrow compass. The petitioners were the owners of the disputed land. On coming into force of the Urban Land (Ceiling and Regulation) Act, 1976 (the Ceiling Act for brief), the petitioners applied for exemption under sec. 20(1) thereof for sale of 8258 square yards of land from the disputed land to one Manmandir Co-operative Housing Society (the Society for convenience) for construction of houses for its members. By the order passed by and on behalf of respondent No. 1 on 26th April 1979, such exemption came to be granted on certain terms and conditions. Its copy is at Annexure B to this petition. It appears that, pursuant thereto, the land was sold to the society by a registered document executed on 21st January 1980 in three sets of 6289 square yards each. Pursuant thereto, the necessary mutation entries were effected in the record of right pertaining to the disputed land on 27th March 1980. Those entries came to be certified by the Circle Officer on 5th June 1980. Copies of the mutation entries with respect to the disputed land are at Annexure C (collectively) to this petition. It appears that the sale transaction came to the notice of the concerned authority under the Bombay Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act for brief). Thereupon the proceedings were initiated under sec. 84C of the Tenancy Act. It came to be registered as Tenancy Case No. 443 of 1982. By the order passed by the Mamlatdar and Agricultural Lands Tribunal of City taluka at Ahmedabad on 29th September 1984 in the aforesaid tenancy case, the proceeding came to be dropped. Its copy is at Annexure E to this petition. It appears that thereafter the City Deputy Collector at Ahmedabad came to know of the aforesaid mutation entries at Annexure C (collectively) to this petition. He appears to have found them not according to law. Thereupon he issued a show-cause notice for their revision under rule 108(6) of the Gujarat Land revenue Rules, 1972 (the Rules for convenience) framed under the Bombay Land Revenue Code, 1879 (the Code for brief) calling upon the petitioners to show cause why the said entries should not be revised. The petitioners filed their reply on 5th October 1983. Thereafter, by the order passed on 20th January 1984, the City Deputy

Collector at Ahmedabad set aside the entries at Annexure C (collectively) to this petition. Its copy is at Annexure F to this petition. The aggrieved petitioners carried the matter in revision before respondent No. 2 under sec. 108(6) of the rules. By his order passed on 17th March 1986 in the aforesaid revisional application, respondent No. 2 rejected it. Its copy is at Annexure G to this petition. The aggrieved petitioners carried the matter in further revision before respondent No. 1 under rule 108(6A) of the Rules. By the order passed by and on behalf of respondent No. 1 on 4th August 1988 in the aforesaid revisional proceeding, respondent No.1 rejected it. Its copy is at Annexure H to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the orders at Annexures F, G and H to this petition.

3. Learned Assistant Government Pleader Shri Sompura for the respondents has raised a preliminary contention about maintainability of this petition under art. 227 of the Constitution of India. Thereupon learned Advocate Shri A.J. Patel for the petitioners has orally applied for leave to convert this petition as also under art. 226 of the Constitution of India. Such oral request for conversion of this petition as also under art. 226 of the Constitution of India is granted on condition of payment of the deficit court-fees, if any, within two weeks from today.

4. It transpires from the material on record that the impugned orders at Annexures F, G and H to this petition were passed on the supposed ground of contravention of the Ceiling Act and what is popularly known as the Fragmentation Act. Shri Patel for the petitioners is right in his submission that the authorities in charge of RTS proceedings are invested with limited powers and they could not exercise powers for examination of the validity of a transaction on the touchstone of some other enactment. The question whether or not authorities in charge of RTS proceedings can examine the validity of a transaction on the basis of which a mutation entry is sought in the record of right on the touchstone of any other enactment is no longer res integra. In its recent ruling in Special Civil Application No. 3928 of 1990 and allied matters decided on 19th April 1996, this Court has held that revenue authorities exercising powers with respect to RTS proceedings have no authority or jurisdiction to examine the validity of the transaction on the basis of which the mutation entry is sought on the touchstone of any other enactment. The aforesaid

unreported ruling of this Court is on all fours applicable in the present case.

5. Besides, the impugned entries were effected in the record of right on 27th March 1980 and certified by the circle officer on 5th June 1980 as transpiring from Annexure C (collectively) to this petition. The show-cause notice for examining their correctness was issued by the City Deputy Collector some time in October or November 1983, that is, nearly 3 1/2 years after the impugned entries were certified. In the aforesaid unreported ruling of this Court in Special Civil Application No. 3928 of 1990 and allied matters decided on 19th April 1996, cancellation of the mutation entry after a period of one year from the date of its certification was quashed and set aside in view of the binding ruling of the Supreme Court in the case of State of Gujarat v. Patel Raghav Natha and others reported in (1969) 10 G.L.R. 992 and in view of the binding Division Bench ruling of this Court in the case of Bhagwanji Bawanji Patel v. State of Gujarat and another reported in (1971) 12 G.L.R. 156. The aforesaid ruling of this Court will govern the situation in the present case also.

6. As pointed out hereinabove, the relevant mutation entries were certified as early as on 5th June 1980 and they were sought to be revised by the show-cause notice issued some time in October or November 1983, nearly 3 1/2 years after their certification in the revenue record. This could not have been done in view of the aforesaid binding ruling of the Supreme Court and the Division Bench ruling of this Court.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure F to this petition as affirmed in revision by the order at Annexure G to this petition as affirmed in further revision by the order at Annexure H to this petition cannot be sustained in law. It has to be quashed and set aside.

8. In the result, this petition is accepted. The order passed by the City Deputy Collector at Ahmedabad on 20th January 1984 at Annexure F to this petition as affirmed in revision by the order passed by the Collector of Ahmedabad on 17th March 1986 at Annexure G to this petition as further affirmed in revision by the order passed by and on behalf of the State Government on 4th August 1988 at Annexure H to this petition is quashed and set aside. It is clarified that this judgment of mine will not preclude the concerned authorities from examining the validity of the transactions in question

according to law if permissible and if desirable after  
passage of so many years. Rule is accordingly made  
absolute with no order as to costs.